IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 58 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

RANJITBHAI LALJIBHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 58 of 2001

MR DR DHIMAR for Petitioner No. 1

MR SS PATEL Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/04/2002

ORAL JUDGEMENT

Heard learned counsel Mr. Dhimar for the petitioner and Ld. APP Mr. SS Patel.

This revision application is filed by the ori. accused of the offence punishable under sec. 279, 304-A,

337 of IPC and punishable under sec. 177 and 184 of Motor Vehicles Act. The petitioner himself informed the police on the next day and the crime came to be registered for above referred offence and after investigation the petitioner was charge-sheeted and i!n turn tried in the Court of Ld. J.M.F.C., Vyara vide Criminal Case No. 1414/1992. After evaluating the oral as well as documentary evidence, the ld. J.M.F.C. held the petitioner guilty of the offence punishable under sec. 279, 337, 304-A of the IPC and under sec. 177 and 184 of the M.V. Act and passed orders imposing substantive sentence for different offecnes and fine vide order dated 1.4.1999.

This order of conviction was challenged by the present petitioner in the Court of Sessions, camping at Vyara. The Criminal Appeal filed by the petitioner being Criminal Appeal No. 16/1999 and after hearing the parties, the ld. Addl. Sessions Judge, district Surat, Camping at Vyara, dismissed the appeal vide impugned judgment dated 17.1.2001.

According to the case of prosecution, 30th december, 1991, the date of incident, the petitioner was driving motor Truck bearing registration No. GRV-5679. The truck was on the kachcha road, and was proceedi!ngs towards village Singalvan but due to rash and negligent driving of the driver, the same turtlled and number of persons sustained injuries, one of them died. The submission of Mr. Dhimar for the petitioner that the ld. trial judge and consequently the ld. Appellate Judge has failed in appreciating the oral as well as documentary evidence. Jurisdiction of first appellate court has not been exercised properly and the same has resulted into miscarriage of justice. The basic principle of evaluation of appreciation of evidence has been ignored and, therefore, the erroneous finding has been arrived at. It is also submitted that the defence plea has been evaluated at length ignoring the aspect as to whether prosecution has successfully established the case of rash and negligent driving on the part of the accused. The conduct of the accused immediately after the accident has also been ignored. The principle of res ipsa loquitor ought not to have been applied in the present case. Even for the sake of argument, if this principle is considered to be a principle applicable even than the panchanama of the scene of the occurence and the oral version of the witness examined does not support the case of the prosecution. At relevant point of time, the road practically was without traffic and the same is passing through one forest area. It was not possible for the

petitioner to drive the vehicle with excessive speed or in a rash or negligent manner. The season when the incident has occurred also could have been looked into. Court can take judicial notice of such certain facts.

Mr. Dhimar has submitted that though it is a case of two concurrent finding on facts, however, when there is patent illegality in appreciating the evidence, than this Court can positively exercise the jurisdiction.

On careful consideration, it is satisfactorily established that when the incident has occurred, it was practically dark. The truck in question was proceeding through a kachcha road leading to village Ambalgudi. The contents of the FIR cannot be used against the petitioner and it was obligatory on the part of the prosecution to prove that the truck was going with excessive speed. Both the courts have wrongly considered the contents of FIR. Undisputely, by both the sides of the road, enough open land was there, but one ditch one the corner of the road came in between. The fact that first two front wheels had already crossed or say passed that small ditch and on account of some error of judgment or because of some sudden pressure on the earth, the rear left side wheel went into that small ditch and the truck turtlled, on one side of the body. This is not a case of overturning of a heavy vehicle on account of very high speed.

The witnesses examined for the prosecution have not supported the case of the prosecution that the vehicle was in excessive speed. The conduct of the accused is also relevant. As per the statutory obligation, he had immediately i.e. on the next day morning reported about the incident to the police station. There is no positive evidence about the speed of the vehicle and it is rightly pointed out that it was not possible for the petitioner to drive the vehicle at the excessive speed at the spot of accident. All cases of error of judgment are not cases of culpable negligent. It seems that the death of one person travelling in the truck has given the emotional turn to the entire incident.

Mr. Dhimar during the course of his submission, has pointed out about the principle propounded by the Apex Court in the case of Mohammed Aynuddin alias Miyam vs. State of Andhra Pradesh, reported in AIR 2000 SC p. 2511, would help petitioner, wherein the Apex Court in para-9 has observed that:

"The principle of res ipsa loquitor is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer."

However, the judgment of the Rajsthan High Court in the case of Bhanwarlal vs. State of Rajsthan, reported in 1970 A.C.J. p. 267 would not help the present petitioner because the cited case is a case where the driver was taken a back when a lady attempted to cross the road suddenly. In the present case, there is no evidence that the petitioner was able to avoid the accident. To the best of his judgment and ability has tried to cross the small strip on the road and two front wheels have already crossed that dangerous part. The turtlling the vehicle in the present case, seems to be a clear case of accident and not a case of culpable negligence resulting into accident.

There is no evidence of an expert. The investigating agency had not get the vehicle examined through expert or R.T.O. Officials. So, it would not be legal or proper to say that the vehicle was not in a fit condition and the same has resulted into an accident. According to Mr. Dhimar, this is not even the case of the prosecution. The important panch witness is not examined during the course of trial otherwise the details of place of accident could have come on record and the accused could have cross-examined this panch witness. Undisputedly, the place of incident is not a high-way even it is neither an asphalt nor a tar road. In number of cases, it has been accepted that when a vehicle is moving on a road, the high speed of the vehicle does not proves culpable rashness or negligence and the same has to be established by the prosecution. This is a case of insufficient evidence. Burden of proof is always on the prosecution and in case the offence punishable under sec. 304-A is not a exception to this general principle. The truck itself has sustained minimum damage of Rs. 5000/ approximately. So, it can be legitimately presumed that the vehicle must not be with excessive speed. The same was found just on the border of the road and had not left the road. All these aspects are not totally considered by the trial court which has resulted into miscarriage of justice.

According to this Court, both the courts below have committed material error in appreciating the evidence, its nature and in applying the basic principle of law. The contradictory version of the witness clearly indicates that this is not a case of culpably negligent driving or rash driving but it emply probebilities that because of error of judgment or sudden fall of some part of earth adjacent to edge of raod or to a small ditch which has described as "Kotaradu", or say on sudden braking of road edge the vehicle must have turtlled. Even kachcha road also makes the driver puzzled and a small error results in such accident. This probability though argued has not been considered at all. This may be a case of civil wrong but not a criminal wrong.

For short, the finding recorded by the courts below holding the petitioner guilty is hereby quashed and set aside. The confirmation of the said judgment by the ld. Appellate Judge while dealing with the Criminal Appeal No. 16/99 automatically goes. The petitioner-accused is hereby ordered to be acquitted from all the charges for which he was charged.

Mr. Dhimar submits that the petitioner-accused has paid the amount of fine and is on bail. He is acquitted. His bail bond and the personal bond stands discharged. The amount of fine paid be refunded to the petitioner-accused. Rule is made absolutely.

(C.K. BUCH, J.)
mandora/